

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

KB HOME,

Plaintiff,

v.

**ANTARES HOMES, LTD., ANTARES
HOMES LLC, ANTARES GP, LLC,
and RONALD F. FORMBY,
an individual,**

Defendants.

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Civil Action No. **3:04-CV-1031-L**

ORDER

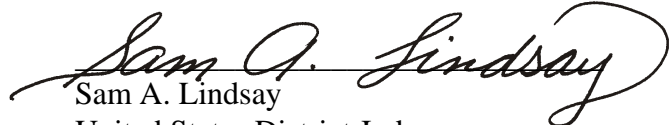
Before the court are the Amended Findings, Conclusion, and Recommendation of the United States Magistrate Judge, filed July 23, 2008. No objections were filed.

The magistrate judge recommends that the court deny Defendants' Motion for Attorney's Fees, filed March 5, 2008. The magistrate judge, considering the factors set forth in *Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994), determined that Plaintiff's claims in this case were objectively reasonable and that an award of attorney's fees to Defendants would not deter frivolous or unreasonable litigation. The court must consider the *Fogerty* factors when determining whether to award attorney's fees pursuant to the Copyright Act, 17 U.S.C. § 505. *Virgin Records America, Inc. v. Thompson*, 512 F.3d 724, 726-27 (5th Cir.), *cert. denied*, 128 S.Ct. 2096 (2008); *see also Galiano v. Harrah's Operating Co.*, 416 F.3d 411, 423 (5th Cir. 2005).

Having reviewed the briefing, file, and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions are correct. The

magistrate judge's findings and conclusions are therefore **accepted** as those of the court. The court **denies** Defendants' Motion for Attorney's Fees.

It is so ordered this 20th day of August, 2008.


Sam A. Lindsay
United States District Judge